

VZCZCXRO7644

PP RUEHBZ RUEHDU RUEHGI RUEHJO RUEHMR RUEHRN
DE RUEHKI #1782/01 3281010
ZNR UUUUU ZZH
P 241010Z NOV 06
FM AMEMBASSY KINSHASA
TO RUEHC/SECSTATE WASHDC PRIORITY 5206
INFO RUEHXR/RWANDA COLLECTIVE
RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
RUEAIIA/CIA WASHDC
RHEFDIA/DIA WASHDC
RHMFISS/HQ USEUCOM VAIHINGEN GE
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK

UNCLAS SECTION 01 OF 02 KINSHASA 001782

SIPDIS

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: PGOV KDEM CG ELECTIONS

SUBJECT: DRC ELECTIONS: SUPREME COURT BEHIND SCHEDULE IN
RULING ON LEGISLATIVE CONTESTS

REF: A. KINSHASA 1412

1B. KINSHASA 1714

1C. KINSHASA 1213

1D. KINSHASA 1777

11. (U) Summary: The DRC's Supreme Court has fallen behind schedule in ruling on legal challenges to the results of the July 30 legislative elections. The DRC's electoral law stipulates the Court has two months to deliberate and rule on electoral complaints. As of November 18, however, the Court has issued judgments on only one-third of the cases brought before it. The Court has overturned seven legislative elections thus far and ordered re-votes in two districts because of significant voting irregularities. The delay in proceedings will have minimal impact on the functioning of the National Assembly, but raises serious questions about the Court's capabilities and jurisprudence. End summary.

12. (U) A total of 348 complaints regarding the July 30 legislative elections were brought before the Supreme Court during the legal challenge period from September 8-11. These challenges contested the provisional legislative election results announced by the Independent Electoral Commission (CEI) on September 7 (ref A). Two additional challenges were allowed to be submitted late due to "exceptional circumstances"; another eight were brought forward challenging Supreme Court decisions on previous legislative election cases.

13. (U) According to the DRC's electoral law, the Court has two months to deliberate and rule on electoral challenges, a period which should have ended November 12. As of November 18, however, the Court has issued judgments for National Assembly seats on only 125 of the 358 registered cases, or roughly one-third of all challenges. The Court issued a statement November 11 saying that because of its significant caseload, and the need to examine properly all cases, it was extending the time permitted by the electoral law to rule on the remaining challenges. The Court added that since the law carries no sanctions for not respecting the two-month time period, it was within its rights to extend its deliberations.

MOST CASES "INADMISSIBLE"

14. (U) The majority of cases -- 78 in total -- on which the Court has ruled have been thrown out on technical grounds. They were dismissed because they failed to meet any of three required conditions: the case was submitted by the proper authorities; was submitted within the prescribed time period; and was presented in the proper format. Jerome Wani, the

Court's principal clerk, told us most cases were declared "inadmissible" because the wrong authority submitted the complaint. He explained that, according to the electoral law, candidates of political parties are not allowed to submit challenges on their own behalf. Instead, the complaints must be registered by the candidate's political party.

¶15. (U) The Court ruled another 23 cases were groundless. Wani said most challenges in this category were dismissed because the claimants failed to provide proof of their allegations or did not precisely state their complaint. He added that many challengers simply demanded that "justice must be done," rather than asking for a specific legal remedy.

SEVEN ELECTIONS OVERTURNED

¶16. (U) The outcomes of seven legislative elections have thus far been overturned by the Court. The most notable of these was the dismissal of RCD-N president Roger Lumbala, an ally of Vice President Jean-Pierre Bemba, from his seat in Eastern Kasai province (ref B). Two candidates from Bemba's Movement for the Liberation of Congo (MLC) party -- one from Western Kasai, the other from Equateur -- also had their elections invalidated, and candidates from opposing parties awarded the seats. One candidate from the pro-Kabila People's Party for Reconstruction and Democracy (PPRD) in Eastern Kasai was also replaced by an opposing candidate. The remaining cases involved rectifying vote counts, resulting in the replacement of candidates by members of their own parties. None of the electoral reversals will have any effect on the overall balance of power in the National Assembly.

KINSHASA 00001782 002 OF 002

TWO RE-VOTES ORDERED

¶17. (U) To date, the Court has ordered re-votes in two electoral districts. In the Equateur district of Befale, the Court ruled that, in addition to other irregularities, the relocation of ten polling stations sufficiently disoriented voters. The Befale district, which has one seat in the Assembly, was won by an independent candidate. The Court decided as well that in the Western Kasai district of Mweka allegations of voter fraud and stuffed ballot boxes warranted a re-vote. Mweka, which has three seats in parliament, was the site of election-day violence July 30 resulting in the destruction and closure of several polling stations (ref C). The CEI has not yet set dates for the re-vote in these districts. Vacancies in these four seats will not impede the functioning of the National Assembly since it will not affect the number of deputies needed to maintain a quorum.

WHY THE DELAYS?

¶18. (SBU) Wani said the delays have largely been caused by the immense case load before the Court. He said most electoral challengers are demanding the Court physically recount the ballots in their respective districts before making any rulings. Wani claimed that the Court is acceding to these requests in an effort to maintain transparency in the process. He added that the Court itself has inadequate facilities and can only permit four audiences a day for hearings.

¶19. (SBU) Wani also admitted that many of the Court's judges are "not motivated" to perform their duties expeditiously. He said the judges are not well-paid and thus have no incentive to finish their work on time. He said he believed that many of the judges do not fully understand the country's election laws and are therefore hesitant to make decisions.

¶10. (SBU) Wani could not say how much longer the Court would need to finish hearing the remaining legislative cases, but anticipated it could be as long as another two months. The Court, which is currently involved in hearing Bemba's challenge to the October 29 presidential results, will further be delayed in ruling because of the November 21 fire which destroyed parts of the building and postponed further sessions (ref D).

COMMENT: TROUBLING PRECEDENT

¶11. (SBU) The Court, charged with defending and upholding the DRC's election laws, has chosen to disregard one of the electoral law's provisions simply because there are "no sanctions" against doing so. Its delays in adjudicating electoral challenges will fortunately not impede the work or the installation of the National Assembly, whose members were seated based on provisional results. All this underlines the need to professionalize the DRC's judicial sector as an immediate post-Transition priority. End comment.

MEECE